

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-110686-07

Date:  
August 10, 2007

### Legend:

Taxpayer =

Individual =

Amount 1 =

Amount 2 =

Date 1 =

Date 2 =

Year 1 =

Dear :

This is in reply to your request pursuant to § 453(d)(3) of the Internal Revenue Code (the Code) and § 15A.453-1(d)(4) of the Temporary Income Tax Regulations for consent to revoke an election out of the installment method.

FACTS:

Taxpayer is an S corporation wholly owned by Individual. In Date 1, Taxpayer sold the majority of its operating assets for Amount 1 and buyer's assumption of certain operating liabilities. In accordance with the purchase and sale agreement, Amount 2 of the total purchase price was placed in an escrow account for two years.

Taxpayer represents that these escrow funds were subject to a substantial restriction, and thus the gain from the sale of the operating assets was eligible for installment sale treatment under § 453 of the Code.

For purposes of computing Individual's estimated tax payments, a return preparer prepared tax projections, which reflected use of the installment method to report the sale of Taxpayer's operating assets in Date 1. However, the return preparer did not prepare Taxpayer's Year 1 tax return in a manner consistent with the tax projections. The entire gain from the sale of Taxpayer's operating assets was reported on Taxpayer's Year 1 return. Taxpayer filed its Year 1 tax return assuming that the return had been prepared in accordance with the tax projections, which reported the asset sale on the installment method. Taxpayer's Year 1 tax return was timely filed in Date 2.

After filing its tax return for Year 1, Taxpayer realized that the full amount of the gain had been included in Year 1. Once it discovered its error, Taxpayer requested approval to revoke the election out of the installment method. Taxpayer represents that revocation of the election will not result in it paying less federal income tax.

#### LAW AND ANALYSIS:

Section 453(a) of the Code provides that, generally, a taxpayer shall report income from an installment sale under the installment method. Section 453(b)(1) defines an installment sale as a disposition of property for which at least one payment is to be received after the close of the taxable year of the disposition.

Section 453(c) of the Code provides that, for the purposes of this section, the term "installment method" means a method under which the income recognized for any taxable year from a disposition is that proportion of the payment received in that year which the gross profit (realized or to be realized when the payment is completed) bears to the total contract price.

Section 453(d)(1) of the Code provides that a taxpayer may elect out of the installment method. Except as otherwise provided in the Regulations, § 453(d)(2) of the Code requires a taxpayer who desires to elect out of the installment method to do so on or before the due date (including extensions) of the taxpayer's federal income tax return for the taxable year of the sale. Section 453(d)(3) of the Code provides that an election made pursuant to § 453(d)(1) may be revoked only with the consent of the Secretary.

Section 15A.453-1(d)(3) of the Temporary Regulations provides that a taxpayer who reports an amount realized equal to the selling price including the full face amount of an installment obligation on a timely filed tax return for the taxable year in which the installment sale occurs is considered to have elected out of the installment method.

Section 15A.453-1(d)(4) of the Temporary Regulations provides that an election under § 453(d)(1) of the Code generally is irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. Section 15A.453-1(d)(4) provides that revocation of an election out of the installment method is retroactive and will not be permitted when one of its purposes is the avoidance of federal income taxes, or when the taxable year in which any payment was received has closed.

In the instant case, Taxpayer's return preparer did not prepare Taxpayer's Year 1 tax return in accordance with Taxpayer's intention to report sale of its operating assets under the installment method. The return preparer inadvertently prepared the Year 1 return reporting all the gain from the asset sale in that year. As soon as Taxpayer became aware of this oversight, Taxpayer filed a request for consent to revoke the election out of the installment method. The information submitted indicates that Taxpayer's desire to revoke the election is due to its return preparer's inadvertence rather than hindsight by Taxpayer or a purpose of avoiding federal income taxes.

#### CONCLUSION:

Based on careful consideration of all of the information submitted and the representations made, we conclude that Taxpayer will be allowed to revoke its election out of the installment sale method with respect to the Year 1 sale of its operating assets.

Permission to revoke the election out of the installment method of reporting for the Year 1 sale of Taxpayer's operating assets is granted for the period that ends 75 days after the date of this letter. In order to revoke its election out of the installment method, Taxpayer must file an amended federal income tax return for Year 1 and any other previously filed returns on which a portion of the gain from the sale is reportable under the installment method. A copy of this letter ruling must be attached to each amended return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including the computation of gain to be reported under the installment method.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This ruling is conditioned upon the accuracy of that information and those representations. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Amy J. Pfalzgraf  
Senior Counsel  
Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

CC: